

**Soccer United Marketing, LLC v Best Funding Home  
Loans, Inc.**

2007 NY Slip Op 31073(U)

May 3, 2007

Supreme Court, New York County

Docket Number: 0603366/2006

Judge: Helen E. Freedman

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HELEN E. FREEDMAN  
*Justice*

PART 39

Soccer United Marketing, LLC,

INDEX NO. 603366/06

Plaintiff,

MOTION DATE \_\_\_\_\_

- v -

Best Funding Home Loans, Inc.,

MOTION SEQ. NO. 001

Defendants

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

**FILED**  
MAY 04 2007  
NEW YORK COUNTY CLERK'S OFFICE

Motion by plaintiff Soccer United Marketing, LLC ("Soccer United") for an order dismissing the counterclaims asserted by defendant Best Funding Home Loans, Inc. ("Best Funding") is granted for the reasons set forth below.

This lawsuit arises from an exhibition soccer match (the "Match") held at the Los Angeles Memorial Coliseum on December 7, 2005, between the USA Men's "A" U-17<sup>1</sup> National Soccer Team (the "US Team") and the Mexican Men's "A" U-17 National Soccer Team (the "Mexican Team"). Soccer United, which stages and promotes soccer matches and holds commercial rights to various soccer organizations' games, entered into an Event Agreement in November 2005 under which Best Funding agreed to bankroll and sponsor the Match, and Soccer United agreed to organize and stage it. Among other things, the Event Agreement provided that Soccer United would "cause the Mexican Men's 'A' U-17 National Soccer Team to play at the

<sup>1</sup>"U-17" means "under 17."

[Match].” As compensation, Best Funding agreed to pay Soccer United \$ 175 thousand when the Event Agreement was executed and another \$ 175 thousand within two days of the Match. After Best Funding failed to make the second payment, Soccer United commenced this action for breach of the Event Agreement.

Best Funding asserts two counterclaims for breach of the Event Agreement and breach of the implied covenant of good faith and fair dealing. Best Funding’s central allegation is that Soccer United failed to produce some of the “key” players from the Mexican Team to play in the Match. Best Funding concedes that all of the competing Mexican players were on the Mexican Team, but it complains that

despite repeatedly promising to deliver substantially all of the players from the [Mexican Team] who started and played in the October 2005 U-17 World Cup game, [Soccer United] delivered a team largely made up of backup – *i.e.*, “bench” – players who had not played in, or who had not substantially contributed to, Mexico’s win over Brazil in the 2005 U-17 World Cup.

Moving for dismissal, Soccer United correctly points out that the Event Agreement did not require them to field specific *players*; instead, the contract obligated Soccer United to field a *team*, which has an identity that is distinct from its roster of players. Since Soccer United furnished players from the official Mexican Team roster to compete at the Match, Soccer United fulfilled its contractual obligation.

In opposition, Best Funding claims that the use of the term “Mexican Men’s ‘A’ U-17 National Soccer Team” in the Event Agreement is ambiguous. Best Funding claims that it interpreted the term to mean “the best [Mexican Team] and, accordingly, the best players on that team.” In support, Best Funding submits evidence that allegedly shows that, before and after the Event Agreement was executed, (1) Best Funding apprised Soccer United of how it interpreted the contract, and (2) in response, Soccer United assured Best Funding that the Mexican Team’s best players would compete at the Match. However, extrinsic evidence has no

bearing on whether a contract is ambiguous, because a court looks only “within the four corners of the document” to make that determination. Moreover, “extrinsic evidence cannot *create* an ambiguity in an agreement.” *Kass v. Kass*, 91 N.Y.2d 554, 568 (1998). The meaning of the Event Agreement is plain: it can only be fairly read as requiring Soccer United to produce the Mexican Team, rather than specific players from that team. In fact, at least five of the Mexican Team members who had competed in the 2005 World Cup also played in the Match<sup>2</sup>.

Moreover, Soccer United’s alleged extra-contractual assurances could not create any obligations beyond those set forth in the Event Agreement. The Event Agreement provides that it “constitutes the entire agreement between the parties and supersedes any oral or written communications,” and accordingly it supplants any prior agreements. The contract also provides that it can only be changed or modified with a signed writing, and therefore Best Funding cannot enforce any informal assurances that Soccer United allegedly made after the Event Agreement was executed.

Best Funding’s counterclaim for breach of the covenant of good faith and fair dealing also fails. The implied covenant of good faith and fair dealing does not “create independent contractual rights.” *Fesseha v. TD Waterhouse Inv. Servs., Inc.*, 305 A.D.2d 268, 168 (1st Dept. 2003). Instead, it insures that one party will not “deprive the other party of its benefits under the contract.” *Skillgames, LLC v. Brody*, 1 A.D.3d 247, 252 (1st Dept. 2003). A claim for breach of the covenant “cannot substitute for an unsustainable breach of contract claim.” *Id.* Soccer United fulfilled its obligations under the Event Agreement, and Best Funding received the benefits for which it expressly contracted, namely a soccer match between the US Team and the Mexican Team. Accordingly, the counterclaim is dismissed.

---

<sup>2</sup>Moreover, since the players were under the age of seventeen, it would have been unreasonable to expect that every “key” player from the Mexican Team would be able to travel abroad in December to participate in an exhibition match.

ORDERED that the motion is granted, and it is further

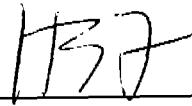
ORDERED that the counterclaims of defendant Best Funding Home Loans, Inc. are severed and dismissed, and it is further

ORDERED that the remainder of the action shall continue, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly, and it is further

ORDERED that the parties are directed to appear for a preliminary conference before the Court on May 29, 2007 at 9:30 a.m.

Dated: May 3, 2007



Helen E. Freedman, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST

**FILED**  
MAY 04 2007  
NEW YORK  
COUNTY CLERK'S OFFICE